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January 22, 2002

**VIA HAND DELIVERY**

**EX PARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**RECEIVED**

JAN 22 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Notification of Ex Parte Communication in ET Docket 98-206; RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.**

Dear Ms. Salas:

On January 18, 2002, Sophia Collier and Antoinette Cook Bush of Northpoint Technology, Ltd. ("Northpoint"), and Peter Huber of this firm met with Commissioner Kevin Martin and his Interim Legal Advisor, Monica Shah Desai, to discuss the pending license applications of Northpoint's Broadwave USA affiliates to provide terrestrial service in the 12.2-12.7 GHz frequency band. Northpoint repeated its request that the Commission grant its pending applications (and associated waiver requests) quickly without an auction.

Northpoint also urged the Commission to adopt a simple, easily measurable equivalent power flux density ("epfd") limit as the means of enforcing terrestrial broadcasters' obligation not to cause harmful interference with DBS services. In addition, Northpoint expressed opposition to any licensing or mitigation plan that would

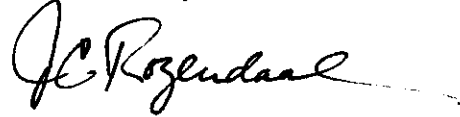
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Ms. Magalie Roman Salas  
January 22, 2002  
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require payments from terrestrial broadcasters to DBS operators. The attached presentation was distributed at the meeting and summarizes additional points discussed.

Eighteen copies of this letter are enclosed – two for inclusion in each of the above-referenced files. Please contact me if you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "J.C. Rozendaal", with a long, sweeping horizontal line extending to the right.

J.C. Rozendaal  
*Counsel for Northpoint Technology, Ltd.*

cc: Commissioner Martin  
Monica Shah Desai

attachment

## Prior to Northpoint the FCC Did Not Consider Ubiquitous Satellite-Terrestrial Sharing Possible

FCC Statements on Satellite-Terrestrial Sharing		
1983	"...fixed services and DBS services cannot use the same frequencies in a geographic area due to interference..."	12.2 – 12.7 GHz
1983	"...not possible..."	11 GHz
1996	"...not feasible at this time..."	18 GHz
1997	"...could cause harmful interference..."	28 – 31 GHz
1998	"...not currently feasible..."	37, 48, 51 GHz
1999	"...will not be able to share..."	39 GHz

- Northpoint invented a new technology that allowed terrestrial services to share with satellites and has spent eight years at the FCC (443 filings) seeking approval to offer its technology to the public.
- Based on Northpoint's record, and only on Northpoint's record, in November 2000, the FCC concluded for the first time ever that "sharing was feasible" between ubiquitous satellite and terrestrial systems.

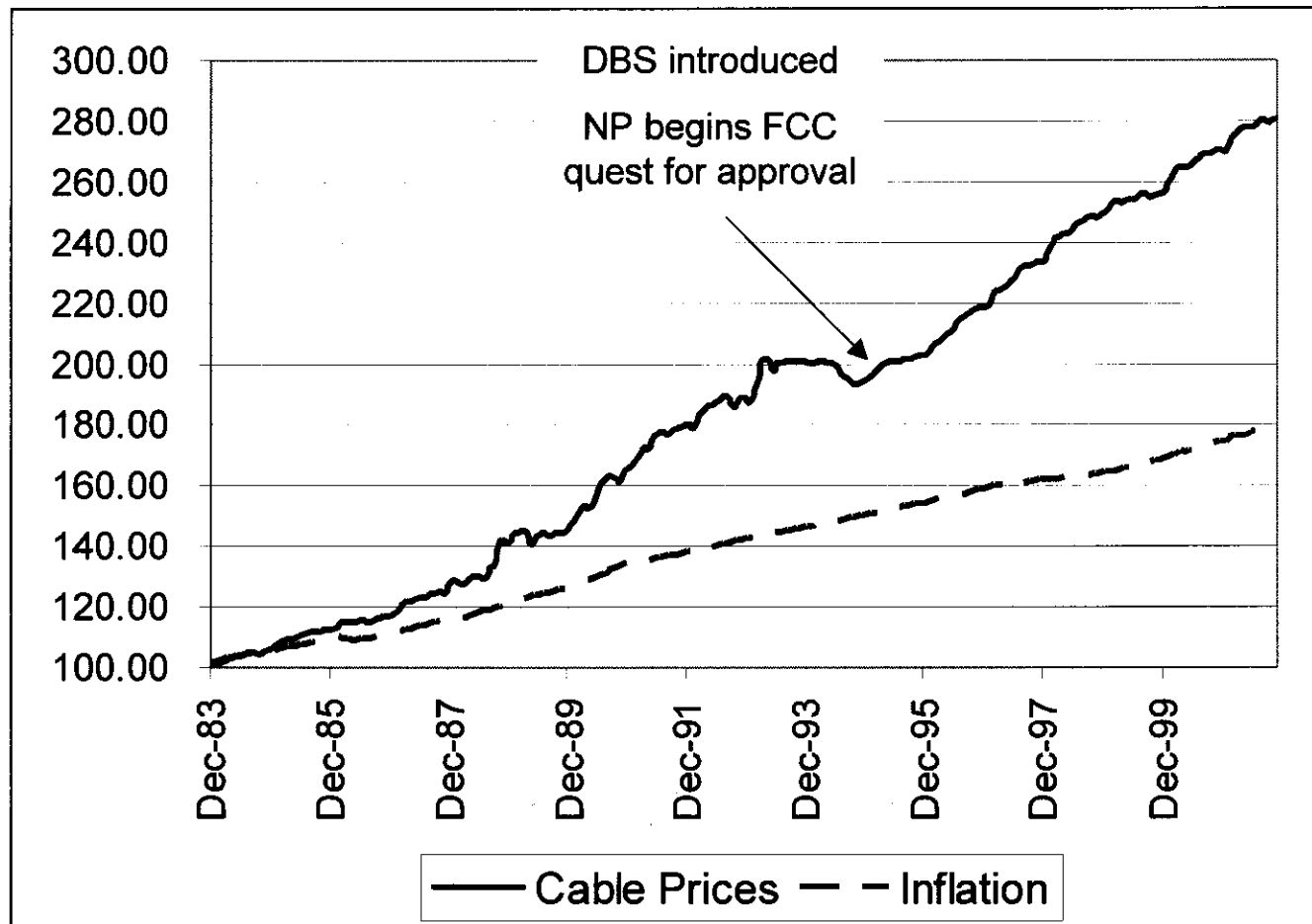
## **Timeline - Northpoint Has Been Seeking FCC Authorization for Eight Years**

- 1994: Northpoint first brought its technology to the FCC.
- 1997: Northpoint was granted first experimental license.
- 1998: Both Northpoint and Skybridge, a satellite system, file Petitions for Rulemaking seeking to use the same band. The FCC consolidated the Petitions and called for satellite, but not terrestrial applications.
- 1999: Northpoint files application for operating licenses along with eight NGSO satellite applicants.
- 2000: Commission Order states all parties could share spectrum.
  - Established process to grant licenses to NGSO satellite applications; sought comment on auction for terrestrial use.
  - Congress establishes “MITRE” independent testing requirement.
- 2001: Northpoint only company to submit equipment and pass test.

# **Northpoint Seeks to Use Its Technology to Create a New Nationwide Competitor to Cable and DBS**

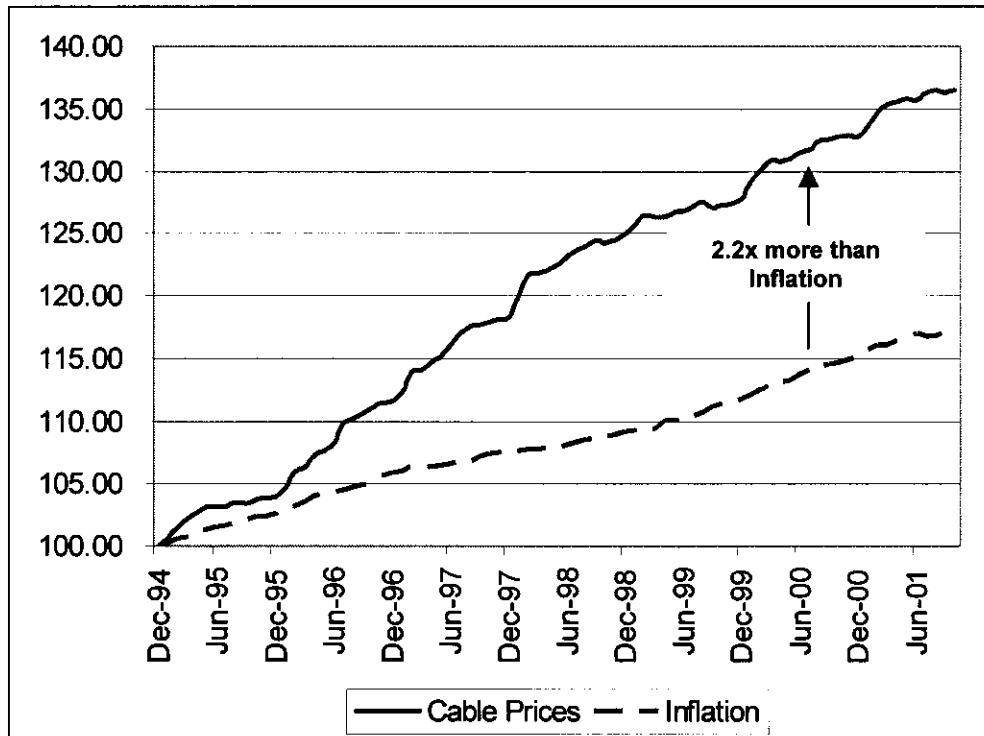
- Competitive consumer services
  - Multi-channel video programming
  - Local signals
  - High-speed internet
  - New technologies
  - Price competition
- Keys to competitive success
  - Low cost infrastructure – enables price competition, broad deployment including rural areas
  - Ability to use existing consumer equipment; program access
  - National brand
  - Licenses for affiliates to operate nationwide

# Multi-channel Video Market Is Ready for Price Competition



Source: Monthly Cable CPI, Bureau of Labor Statistics

## Increase in Cable Prices Since 1994



Cable prices have risen 37% while NP has been seeking FCC approval...

\$15.8 billion more per year in total charges than is justified by inflation...

Overcharges average \$230 per year for each cable subscriber.

Northpoint's Broadwave affiliates could provide immediate price competition where it is currently lacking.

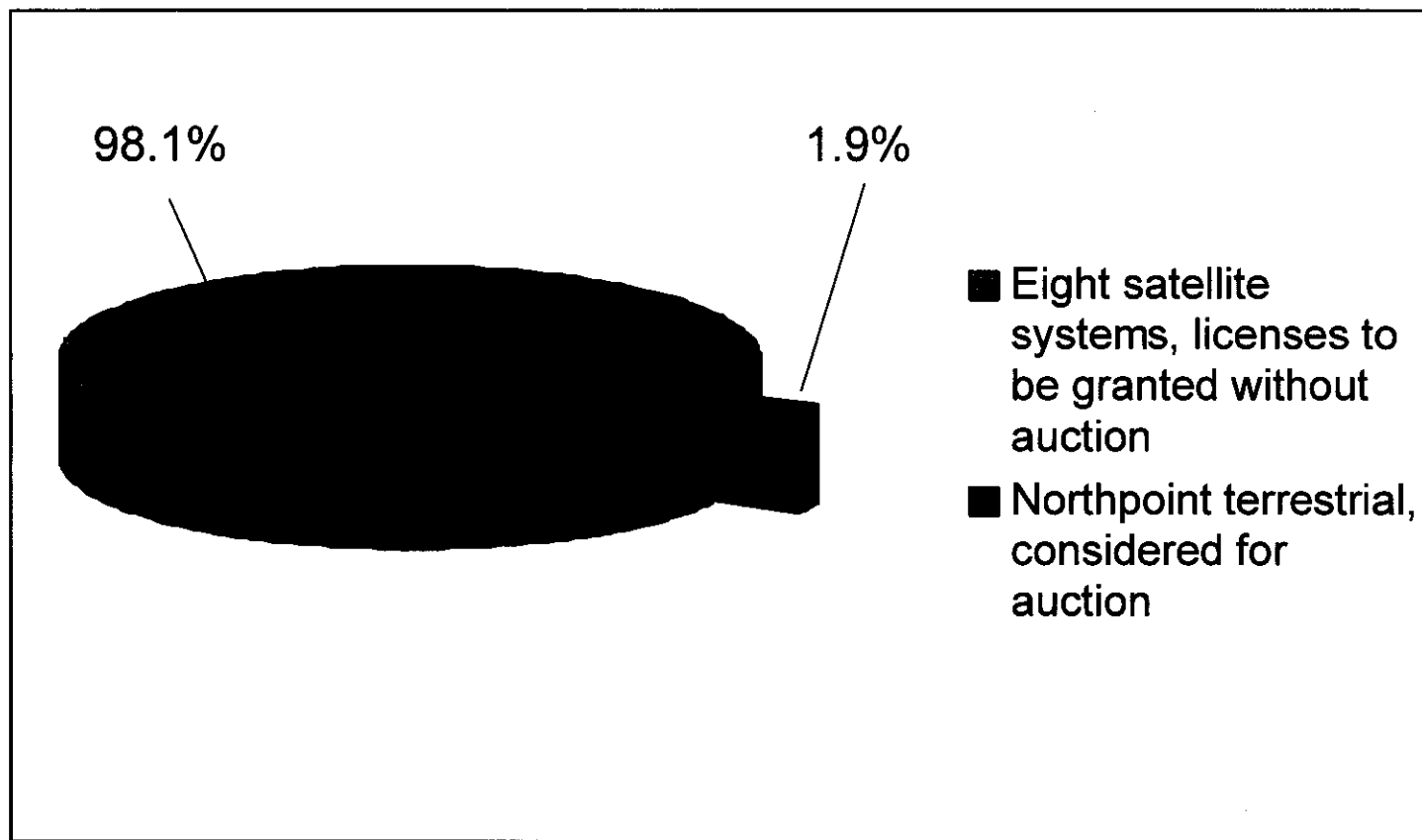
## **2001 Licensing Actions - FCC Decisions on When to Auction or Not Auction Seem Arbitrary**

- Satellite systems: Aug. 2001: 11 companies granted 66,000 MHz of spectrum without auction. No assertion that ORBIT prohibited auction. Licenses given to Hughes, Pegasus, Echostar et al.
- Hybrid systems: Dec 2001: Boeing given blanket license to operate Connexion system: No “service” created; No call for competing applications; No auction. License granted in less than a year through a “waiver” in a spectrum band where a rulemaking was being conducted for other services!
- Ground based wireless licenses: Over 11,000 granted in 2001 without auction, primarily to large commercial telecommunications companies such as Nextel, AT&T Wireless, et al.
- Cable Relay Licenses: All licenses granted without auction in 2001
- Northpoint: Seeks license to operate using 500 MHz of spectrum capacity created through its own technology
  - Auction considered. Will share with the eight systems with whom it applied on the same day, sharing the very same spectrum, offering the same or similar services that will not be subject to auction.



## Northpoint Seeks Parity With Co-Applicants

- Northpoint's Broadwave affiliates applied for a license on the same day as 8 satellite systems all of whom will be licensed without auction.

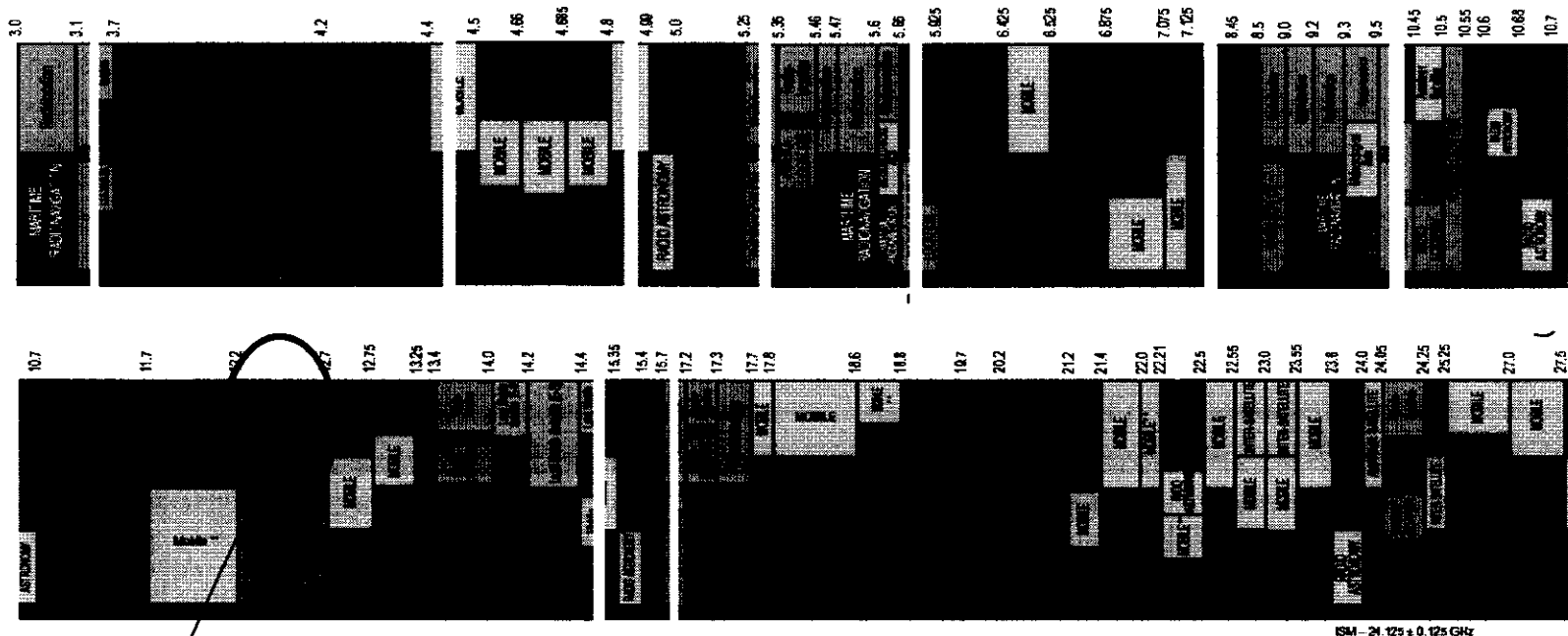


## Northpoint Seeks Parity With DBS Operators

- When the DBS service was established all DBS licenses were issued without auction.
  - DBS is currently using 5,800 MHz of spectrum capacity granted to it without auction.
  - DirecTV has never participated in an auction.
  - The two slots that were auctioned in 1996 were anomalies and the Commission has returned to its no-auction policy for DBS operators with its August 2001 Ka-Band grants.
    - Notably Pegasus, DirecTV's largest distributor – who has advocated an auction for Northpoint– was given five nationwide licenses in the Ka-Band *without an auction*.

# Northpoint Seeks Parity With Other Microwave Operators

- The FCC has never conducted a single auction for any ground based license in the spectrum band 3 – 27 GHz. In total, 42,770 microwave licenses have been issued without auction since 1993 when the FCC obtained auction authority.
- Why would the Commission chose to single out for auction the one company that created its own bandwidth through a new technology?



Auction?

## Review of 2001 Auction Results

Number	Auction Description	Licenses offered	Licenses sold	Proceeds	% sold
35	NextWave Re-auction	422	0	\$ -	0%
38	700 Guard Band	8	8	21.0	100%
39	VHF Location Monitoring	257	217	1.1	84%
40	Paging	15,514	5,323	12.9	34%
41	Narrowband PCS	365	317	8.3	87%
42	Multiple Address System	5,104	878	1.2	17%
	Total	21,670	6,743	\$ 44.5	31%

### Listing of the results of all auctions performed in 2001

Source: FCC website  
 (<http://wireless.fcc.gov/auctions/summary.html>)

## **Auctions Are Discretionary; Not Mandatory**

- As the FCC licensing activity demonstrates the Commission can easily grant licenses without an auction when it chooses to do so.
- No law requires an auction for Northpoint.
- Auctions have significant legal impediments in this case.
  - Lack of mutual exclusivity
  - Patents
    - Local TV Act requires independent testing; FCC risks “1498 taking” if testing infringes NP patents
  - Procedural fairness (disparity treatment of similarly situated applicants)
  - ORBIT Act

## CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 22nd day of January, 2002, copies of the foregoing were served by hand delivery\* and/or first class United States mail, postage prepaid, on the following:

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